

AMENDED IN SENATE JUNE 22, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2781**

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**Introduced by Assembly Member Leno**

February 24, 2006

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An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2781, as amended, Leno. Child support collectors.

Existing law governs the collection of child support by local child support agencies, or by means of a writ of execution, a notice of levy, or an earnings assignment order.

This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private child support collectors, as defined. Among other things, the bill would require a private child support collector to provide specified notices and disclosures to the child support obligee in a written contract and additional information about child support payments during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to child support agencies and other governmental entities, and prescribe procedures and remedies for enforcement of the provisions of the act. The bill would also require that every court order for child support issued on or after January 1, 2008, and every child support agreement providing for the payment of child support approved by the court on or after January 1, 2008,

include a separate obligation owed by the child support obligor to pay  $\frac{1}{2}$  of the fee charged by a private child support collector, as specified. This obligation would have the force and effect of a money judgment in favor of the private child support collector and the child support obligee, jointly. The bill would also establish requirements relating to the compensation of attorneys who are private child support collectors.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 9 (commencing with Section 5610) is added to Part 5 of Division 9 of the Family Code, to read:

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. (a) For the purposes of this section, “private child support collector” means any individual, corporation, attorney, nonprofit organization, or other nongovernmental entity who is engaged by an obligee to collect child support ordered by a court or other tribunal for a fee or other consideration. The term does not include any attorney who addresses issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under Division 10 (commencing with Section 6200), a proceeding for dissolution of marriage, legal separation, or nullity of marriage, or in post judgment or modification proceedings related to any of those actions. A “private child support collector” includes any private, nongovernmental attorney whose business is substantially comprised of the collection or enforcement of child support. As used in this subdivision, “substantially” means that at least 50 percent of the attorney’s business, either in terms of remuneration or time spent, is comprised of the activity of seeking to collect or enforce child support obligations for other individuals.

(b) Any contract for the collection of child support between a private child support collector and an obligee shall be written in simple language, in at least 10-point type, signed by the private child support collector and the obligee. The contract shall be

1 delivered to the obligee in a paper form that the obligee may  
2 retain for his or her records. The contract shall include all of the  
3 following:

4 (1) An explanation of the fees imposed by contract and  
5 otherwise permitted by law and an example of how they are  
6 calculated and deducted.

7 (2) A statement that the amount of fees to be charged is set by  
8 the agency and is not set by state law.

9 (3) *A statement that the private child support collector cannot*  
10 *charge fees on current support if the obligee received any*  
11 *current child support during the 6 months preceding execution*  
12 *for the contract with the private collector.*

13 (4) An explanation of the nature of the services to be provided.

14 ~~(4)~~

15 (5) The expected duration of the contract, stated as a length of  
16 time or as an amount to be collected by the collection agency.

17 ~~(5)~~

18 (6) An explanation of the opportunities available to the obligee  
19 or private child support collector to cancel the contract or other  
20 conditions under which the contract terminates.

21 ~~(6)~~

22 (7) The mailing address, street address, telephone numbers,  
23 facsimile numbers, and Internet address or location of the private  
24 child support collector.

25 ~~(7)~~

26 (8) A statement that the private child support collector is not a  
27 government entity and that government entities in California  
28 provide child support collection and enforcement services free of  
29 charge.

30 ~~(8)~~

31 (9) A statement that the private child support collector collects  
32 only money owed to the obligee and not support assigned to the  
33 state or county due to the receipt of CalWORKs or Temporary  
34 Assistance to Needy Families.

35 ~~(9)~~

36 (10) A statement that the private child support collector will  
37 not retain fees from collections that are primarily attributable to  
38 the actions of a government entity or any other person or entity  
39 and is required by law to refund any fees improperly retained.

40 ~~(10)~~

(11) A statement that the obligee may continue to receive, or may pursue, services through a government entity to collect support, and the private child support collection agency will not require or request that the obligee cease or refrain from engaging those services.

~~(11)~~

(12) A notice that the private child support collector is required to keep and maintain case records for a period of four years and four months, after the expiration of the contract and may thereafter destroy or otherwise dispose of the records. The obligee may, prior to destruction or disposal, retrieve those portions of the records that are not confidential.

~~(12)~~

(13) A “Notice of Cancellation,” which shall be included with the contract and which shall contain, in the same size font as the contract, the following statement, written in the same language as the contract:

“Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within 15 business days from the date the contract is signed or you receive this notice, whichever is later, or at any time if the private child support collector commits a material breach of any provision of the contract or a material violation of any provision of this chapter with respect to the obligee or the obligor, or \_\_\_\_\_ (all other reasons for cancellation permitted).

To cancel this contract, mail or deliver a signed copy of this cancellation notice or any other written notice to \_\_\_\_\_ (name of private child support collector) at \_\_\_\_\_ (address for mail or delivery) no later than midnight on \_\_\_\_\_ (date).

I am canceling this contract. \_\_\_\_\_ (date)  
\_\_\_\_\_ (signature)”

~~(13) (A) Each private child support collector shall make the following disclosure in any advertisement, commercial, or other solicitation:~~

~~“(Name of private child support collector) is a private child support collector and not a governmental entity. (Name of private child support collector) charges a fee for services provided.”~~

~~(B) The disclosure required by subparagraph (A) shall be printed in every written advertisement and solicitation as follows:~~

~~(i) In a type size that is at least equal to one-quarter of the largest type size used in the solicitation to advertise the collection service. In no event shall the disclosure be printed in less than 8-point type.~~

~~(ii) In the same style and color of type used to advertise the collection service.~~

~~(iii) Immediately above, below, or beside the advertised fee without any intervening words, pictures, marks, or symbols.~~

~~(iv) In the same language as the advertisement.~~

~~(C) The disclosure required by subparagraph (A) shall be broadcast in every radio or television advertisement and solicitation. For broadcast advertisement of 30 seconds or less, the disclosure may be shortened as follows:~~

~~“(Name of private child support collector) is not a governmental entity, and charges a fee for its services.”~~

~~(D) This section shall apply to an advertisement, commercial, or solicitation in English or any other language.~~

~~(14) (A) Each private child support collector:~~

~~(i) That charges any initial fee, processing fee, application fee, filing fees, or other fee or assessment that must be paid by an obligee regardless of whether any child support collection is made on behalf of the obligee shall make the following disclosure in every radio, television, or print advertisement intended for a target audience consisting primarily of California residents:~~

~~“(Name of private child support collector) is not a governmental entity and charges an up-front fee for its services even if it does not collect anything.”~~

~~(ii) That does not charge any fee or assessment specified in subparagraph (i) shall make the following disclosure in every radio, television, or print advertisement aired for a target audience consisting primarily of California residents:~~

~~“(Name of private child support collector) is not a governmental entity and charges a fee for its services.”~~

~~(B) The disclosures required in subparagraph (A) shall also be stated during the first 30 seconds of any initial telephone conversation with an obligee and in the private child support collector’s contract.~~

1 (C) The disclosures required by subparagraph (A) shall be  
2 printed in the contract, as required by subparagraph (B), as  
3 follows:

4 (i) In a type size that is at least equal to one-quarter of the  
5 largest type size used in the contract. In no event shall the  
6 disclosure be printed in less than 8-point type.

7 (ii) In a contrasting style, and contrasting color or bold type  
8 that is equally or more visible than the type used in the contract.

9 (iii) Immediately above, below, or beside the stated fee without  
10 any intervening words, pictures, marks, or symbols.

11 (iv) In the same language as the contract.

12 (15) The following statement by the obligee on the first page of  
13 the contract:

14 “I understand that this contract calls for (name of private child  
15 support collector) to collect money owed to me, and not money  
16 owed to the state or county. If child support is owed to the state  
17 or county because I am receiving or have received program  
18 benefits from CalWORKs or Temporary Assistance to Needy  
19 Families, then (name of private child support collector) cannot  
20 collect that money for me. If I start to receive program benefits  
21 from CalWORKs or Temporary Assistance to Needy Families  
22 during this contract, I must notify (name of private child support  
23 collector) in writing.”

24 “I declare by my signature below that the child support to be  
25 collected for me pursuant to this contract is not assigned to the  
26 state or county as of the time I sign this contract. I agree that I  
27 will give written notice to the private child support collector if I  
28 apply for program benefits under CalWORKs or Temporary  
29 Assistance to Needy Families during the term of this contract.”

30 (16) (A) The following statement by the obligee immediately  
31 above the signature line of the contract:

32 “I understand that (name of private child support collector)  
33 will charge a fee for all the current child support and arrears it  
34 collects for me until the entire contract amount is collected or the  
35 contract terminates for another reason. I also understand that  
36 depending on the frequency and size of payments, it could take  
37 years for the amount specified in my contract to be collected.  
38 This means that if (name of private child support collector) is  
39 collecting my current support by wage withholding or other  
40 means, I will not receive the full amount of my periodic

1 *court-ordered current support until the contract terminates since*  
2 *(name of private child support collector) will be deducting its fee*  
3 *from the periodic court-ordered current support it collects for*  
4 *me.*

5 (B) *The statement required by subparagraph (A) shall:*

6 (i) *Be in a type size that is at least equal to one-quarter of the*  
7 *largest type size used in the contract. In no event shall the*  
8 *disclosure be printed in less than 8-point type.*

9 (ii) *Be in a contrasting style, and contrasting color or bold*  
10 *type, which is equally or more visible than the type used in the*  
11 *contract.*

12 (c) (1) An obligee shall have the right to cancel a contract  
13 with a private support collector within 15 business days of the  
14 later of signing the contract, or receiving a blank notice of  
15 cancellation form, or at any time if the private child support  
16 collector commits a material breach of any provision of the  
17 contract or a material violation of any provision of this chapter  
18 with respect to the obligee or the obligor.

19 (2) A contract shall automatically terminate when the contract  
20 term has expired or the contract amount has been collected,  
21 whichever occurs sooner.

22 (3) An obligee shall have the right to cancel a contract with a  
23 private child support collector at the end of any 12-month period  
24 in which the total amount collected by the private child support  
25 collector is less than 50 percent of the amount scheduled to be  
26 paid under a payment plan.

27 ~~(4) No private child support collector shall take an assignment~~  
28 ~~of the support obligation.~~

29 ~~(5) The private child support collector may, subject to all~~  
30 ~~limitations provided for in the contract, collect the greater of the~~  
31 ~~following:~~

32 ~~(A) The proceeds from a withholding order for child support~~  
33 ~~only if that order has been in effect with the same employer for~~  
34 ~~less than six months or has yielded less than six months' of~~  
35 ~~withholding order payments.~~

36 ~~(B) The actual costs established by the private child support~~  
37 ~~collector to collect the proceeds of the withholding order.~~

38 ~~(6) The private child support collector may not collect on~~  
39 ~~current child support payments.~~

40 (7)

1     (4) *An assignment to a private child support collector is a*  
2 *voluntary assignment for the purpose of collecting the domestic*  
3 *support obligation as defined in Section 101 of Title 11 of the*  
4 *United States Bankruptcy Code (11 U.S.C. Section 101 (14 A)).*

5     (5) *The private child support collector shall not charge fees on*  
6 *current support if the obligee received any current child support*  
7 *during the six months preceding execution of the contract with*  
8 *the private child support collector. A private child support*  
9 *collector shall inquire of the obligee and record the month and*  
10 *year of the last current support payment and may rely on*  
11 *information provided by the obligee in determining whether a fee*  
12 *may be charged on current support.*

13     (6) A private child support collector that improperly retains  
14 fees from collections that are primarily attributable to the actions  
15 of a government entity or to any other person or entity shall  
16 refund all of those fees to the obligee immediately upon  
17 discovery or notice of the improper retention of fees.

18     (d) (1) A private child support collector shall provide to an  
19 obligee all of the following information:

20     (A) The name of, and other identifying information relating to,  
21 any obligor who made child support payments collected by the  
22 private child support collector.

23     (B) The amount of support collected by the private child  
24 support collector.

25     (C) The date on which each amount was received by the  
26 private child support collector.

27     (D) The date on which each amount received by the private  
28 child support collector was sent to the obligee.

29     (E) The amount of the payment sent to the obligee.

30     (F) The source of payment of support collected and the actions  
31 affirmatively taken by the private child support collector that  
32 resulted in the payment.

33     (G) The amount and percentage of each payment kept by the  
34 private child support collector as its fee.

35     (2) The information required by paragraph (1) shall either be  
36 made available, at the option of the obligee, by mail, telephone,  
37 or via secure Internet access. If provided by mail, the notice shall  
38 be sent at least quarterly *and, if provided by any other method,*  
39 *the information shall be updated and made available at least*



1 *monthly*. Information accessed by telephone and the Internet shall  
2 be up to date.

3 (3) *A private child support collector shall establish a direct*  
4 *deposit account with the state disbursement unit and shall within*  
5 *two business days from the date the funds are dispersed from the*  
6 *state disbursement unit to the private child support collector, if a*  
7 *portion of the funds constitute an obligor's fee, notify the*  
8 *Department of Child Support Services of the portion of each*  
9 *collection that constitutes a fee. The notification shall be sent by*  
10 *the private child support collector to the department in an*  
11 *electronic format to be determined by the department.*

12 (e) (1) A private child support collector shall maintain records  
13 of all child support collections made on behalf of a client who is  
14 an obligee. The records required under this section shall be  
15 maintained by the private child support collector for the duration  
16 of the contract plus for a period of four years and four months  
17 from the date of the last child support payment collected by the  
18 private child support collector on behalf of an obligee. In  
19 addition to information required by subdivision (d), the private  
20 child support collector shall maintain the following:

21 (A) A copy of the order establishing the child support  
22 obligation under which a collection was made by the private  
23 child support collector.

24 (B) Records of all correspondence between the private child  
25 support collector and the obligee or obligor in a case.

26 (C) Any other pertinent information relating to the child  
27 support obligation, including any case, cause, or docket number  
28 of the court having jurisdiction over the matter and official  
29 government payment records obtained by the private child  
30 support collector on behalf of, and at the request of, the obligee.

31 (2) A private child support collector shall safeguard case  
32 records in a manner reasonably expected to prevent intentional or  
33 accidental disclosure of confidential information pertaining to the  
34 obligee or obligor, including providing necessary protections for  
35 records maintained in an automated system.

36 (3) Every person who contracts with a private child support  
37 collector shall have the right to review all files and documents,  
38 both paper and electronic, in the possession of the private child  
39 support collector *for the information specified in this paragraph*  
40 regarding that obligee's case that are not required by law to be

1 kept confidential. The obligee, during regular business hours,  
2 shall be provided reasonable access to and copies of the files and  
3 records of the private child support collector regarding all  
4 moneys received, collection attempts made, fees retained or paid  
5 to the private child support collector, and moneys disbursed to  
6 the obligee. The private child support collector may not charge a  
7 fee for access to the files and records, but may require the obligee  
8 to pay up to three cents (\$0.03) per page for the copies prior to  
9 their release.

10 (f) *If an obligee contracts with a private child support*  
11 *collector to collect child support, the private child support*  
12 *collector shall provide, prior to commencing collection activities,*  
13 *written notice to the local child support agency that is enforcing*  
14 *the obligee's support order, if known, or the local child support*  
15 *agency for the county in which the obligee resides as of the time*  
16 *the contract is signed by the obligee. The notice shall identify the*  
17 *obligee and the amount of the arrearage claimed by the obligee.*

18 (g) A private child support collector shall not do any of the  
19 following:

20 (1) Collect or attempt to collect child support by means of any  
21 conduct that is prohibited of a debt collector collecting a  
22 consumer debt under Sections 1788.10 to 1788.16, inclusive, of  
23 the Civil Code. *This chapter does not modify, alter, or amend the*  
24 *definition of a debt or a debt collector under the Rosenthal Fair*  
25 *Debt Collection Practices Act, Title 1.6C (commencing with*  
26 *Section 1788) of Part 4 of Division 3 of the Civil Code.*

27 (2) Misstate the amount of the fee that may be lawfully paid to  
28 the private child support collector for the performance of the  
29 contract or the identity of the person who is obligated to pay that  
30 fee.

31 (3) Make a false representation of the amount of child support  
32 to be collected. A private child support collector is not in  
33 violation of this paragraph if it reasonably relied on ~~evidence~~  
34 *sufficient documentation* provided by the government entity  
35 collecting child support, a court with jurisdiction over the support  
36 obligation, or from the obligee, or upon ~~proof~~ *sufficient*  
37 *documentation* provided by the obligor.

38 (4) Ask any party other than the obligor to pay the child  
39 support obligation, unless that party is legally responsible for the  
40 obligation or is the legal representative of the obligor.

(5) On or after January 1, 2007, no private child support collector may require, as a condition of providing services to the obligee, that the obligee waive any right or procedure provided for in any state law regarding the right to file and pursue a civil action, or that the obligee agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California, as provided by law. Any waiver by the obligee of the right to file and pursue a civil action, the right to file and pursue a civil action in California, or the right to rely upon California law as provided by law must be knowing, voluntary, and not made a condition of doing business with the private child support collector. Any waiver, including, but not limited to, an agreement to arbitrate or regarding choice of forum or choice of law, that is required as a condition of doing business with the private child support collector, shall be deemed involuntary, unconscionable, against public policy, and unenforceable. The private child support collector has the burden of proving that any waiver of rights, including any agreement to arbitrate a claim or regarding choice of forum or choice of law, was knowing, voluntary, and not made a condition of the contract with the obligee.

~~(g)~~

(h) (1) A person may bring an action for actual damages incurred as a result of a violation of this section.

(2) In addition to actual damages, a private child support collector who willfully and knowingly violates the provisions of this section shall be liable for a civil penalty in an amount determined by the court, which may not be less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

~~(3) A person who prevails in an action brought pursuant to this section is entitled to recover court costs. Reasonable attorney's fees shall be awarded to a prevailing obligee or obligor. On a finding by a court that an action pursuant to this section was brought by an obligee or obligor in bad faith or for purposes of harassment, the court shall award the private child support collector attorney's fees reasonably related to the work performed and costs. (A) The prevailing party in any action pursuant to this section shall be entitled to recover the costs of the action. Reasonable attorney's fees, which shall be based on the time necessarily expended to enforce the liability, shall be~~

1 awarded to a prevailing party, other than the private child  
2 support collector, asserting rights under this section. Reasonable  
3 attorney's fees may be awarded to a prevailing private child  
4 support collector if the court finds that the party bringing the  
5 action did not prosecute the action in good faith.

6 (B) In an action by an obligor under this chapter, the private  
7 child support collector shall have no civil liability under this  
8 chapter to the obligor under any circumstance in which a debt  
9 collector would not have civil liability under Section 1788.30 of  
10 the Civil Code.

11 (4) A private child support collector is not in violation of this  
12 section if the private child support collector shows, by a  
13 preponderance of the evidence, that the action complained of was  
14 not intentional and resulted from a bona fide error that occurred  
15 notwithstanding the use of reasonable procedures to avoid the  
16 error.

17 (5) The remedies provided in this subdivision are cumulative  
18 and are in addition to any other procedures, rights, or remedies  
19 available under any other law.

20 ~~(h)~~

21 (i) Any waiver of the rights, requirements, and remedies  
22 provided by this section violates public policy and is void.

23 ~~(i)~~

24 (j) Every court order for child support issued on or after  
25 January 1, 2008, and every child support agreement providing for  
26 the payment of child support approved by a court on or after  
27 January 1, 2008, shall include a separate ~~obligation~~ money  
28 judgment owed by the child support obligor to pay one-half of  
29 the fee charged by a private child support collector pursuant to a  
30 contract complying with the requirements of this section and any  
31 other child support collections costs expressly permitted by the  
32 child support order. The obligation to pay half the fee shall have  
33 the force and effect of a money judgment in favor of the private  
34 child support collector and the child support obligee, jointly. The  
35 obligation to pay the fee may be enforced by the private child  
36 support collector by any means available to the obligee for the  
37 enforcement of the child support order without any additional  
38 action or order by the court, however, ~~the fee does nothing in this~~  
39 ~~section shall be construed to grant the private child support~~  
40 ~~collector any enforcement remedies beyond those authorized by~~

1 *federal or state law. Any fee collected from the obligor pursuant*  
2 *to a contract complying with the requirements of this section,*  
3 *shall not constitute child support.*

4 ~~(j)~~

5 (k) If the child support order makes the obligor responsible for  
6 payment of collection fees and costs, fees that are deducted by a  
7 private child support collector may not be credited against child  
8 support arrearages or interest owing on arrearages or any other  
9 money owed by the obligor to the obligee.

10 ~~(k)~~

11 (l) If the order for child support requires payment of collection  
12 fees and costs by the obligor, then not later than five days after  
13 the date that the private child support collector makes its first  
14 collection, written notice shall be provided to the obligor of (1)  
15 the amount of arrearages subject to collection, (2) the amount of  
16 the collection that shall be applied to the arrearage, and (3) the  
17 amount of the collection that shall be applied to the fees and  
18 costs of collection. The notice shall provide that, in addition to  
19 any other procedures available, the obligor has 30 days to file a  
20 motion to contest the amount of collection fees and costs  
21 assessed against the obligor as well as the amount of the  
22 arrearages subject to collection.

23 ~~(l)~~

24 (m) Notwithstanding any other provision of this section,  
25 including provisions establishing a right of cancellation and  
26 requiring notice thereof, any contract for the collection of child  
27 support between an attorney who is a “private child support  
28 collector” pursuant to subdivision (a) shall conform to the  
29 statutes, rules, and case law governing attorney conduct,  
30 including the provisions of law providing that a contract with an  
31 attorney is cancelable by the attorney’s client at any time. Upon  
32 cancellation of that contract, the attorney may seek compensation  
33 as provided by law, including, where applicable, a claim for the  
34 reasonable value of any services rendered to the attorney’s client  
35 pursuant to the doctrine of quantum meruit, provided those  
36 services lead to the collection of support and the compensation is  
37 limited to what would have been collected had the contract been  
38 in effect. To the extent that the provisions of this section are in  
39 conflict with the provisions of state law governing the conduct of  
40 attorneys, the more specific law shall control. If there is no

1 conflict, an attorney who is a “private child support collector”  
2 pursuant to subdivision (a) shall conform to the provisions of this  
3 section.

4 *(n) Any fees or monetary obligations resulting from the*  
5 *contract between an obligee parent and a private child support*  
6 *collector, or moneys owed to a private child support collector by*  
7 *the obligor parent or obligee parent as a result of the private*  
8 *child support collector’s efforts, does not without further action*  
9 *create a lien on real property nor shall that amount be added to*  
10 *any existing lien created by a recorded abstract of support or be*  
11 *added to an obligation on any abstract of judgment. Nothing*  
12 *contained herein, however, shall prevent a private child support*  
13 *collector from collecting fees it is owed by obtaining and*  
14 *recording a new judgment lien as otherwise authorized by law.*